IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.304/2002

Banni Singh S/o Bharatlal
Versus
State of Rajasthan

Date of Judgment :::: 21st May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Ms. Anupama Parashar, Amicus Curiae, for accused-appellant
Smt. Nirmala Sharma, P.P., for the State
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By the Court:-

Heard learned counsel for the parties.

Accused Banni Singh S/o Bharatlal has preferred this criminal appeal under Section 374 of the Code of Criminal Procedure against the judgment and order dated 17th of January, 2002, passed by the Additional District & Sessions Judge (Fast Track), Gangapurcity, in Sessions Case No.113/2001, whereby he was convicted and sentenced as under:-

Under Section	***Sentence of Imprisonment***
363, IPC	To undergo three years rigorous imprisonment and a fine of Rs.5,00/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.
366, IPC	To undergo three years rigorous imprisonment and a fine of Rs.5,00/-; in default of payment of fine, to further undergo one month's additional simple imprisonment.

Under Section	***Sentence of Imprisonment***
376, IPC	To undergo seven years rigorous imprisonment and a fine of Rs.1,000/-; in default of payment of fine, to further undergo two months' additional simple imprisonment.

All these sentences were ordered to run concurrently.

The prosecution case, in brief, is that a written-report (Exhibit P-1) was lodged by Jagdish Prasad on 20th June, 2001, alleging therein that his niece Anita, daughter of Shri Ratiram, aged about 13 years, was sleeping in the house with other family members on 19th June, 2001; at about 3.00 in the night when his wife woke-up, she told that Anita is not at the home; I thought that she might have gone for natural call but when Anita did not come for considerable time, we made a search for her. It was further alleged therein that in the night at about 12 O'clock he had seen one person, who was identified as Banni Singh S/o Bharatlal, therefore, it was alleged that Banni Singh has abducted Anita.

On the basis of this information, FIR No.124/2001 was registered under Section 363, Indian Penal Code, and investigation commenced. During investigation, the site-plan (Exhibit P-15) was prepared. Kumari Anita was recovered and her statement was recorded under Section 161, Cr.P.C. The accused

was arrested.

After completion of investigation, a challan was filed under Sections 363 and 376, Indian Penal Code. The trial court framed charge against the accused-appellant under Sections 363, 366 and 376, Indian Penal Code. The prosecution examined PW-1 to PW-13 and produced documentary evidence Exhibit P-1 to Exhibit P-32. In defence, the accused examined 3 documents Exhibit D-1 to Exhibit D-3.

The learned trial court, after considering the evidence on the record, convicted and sentenced the accused-appellant, as mentioned above.

The learned counsel for the accused-appellant contended that although the trial court has recorded a finding that prosecutrix Anita was less than 16 years of age; as per the medical-report her age was found in between 14 to 16 years and in case three years benefit is given to accused then her age comes to about 19 years, and, in view of Exhibit D-3 - the letter written by Anita to the accused, it is clear that it was a case of consent and the trial court has committed an illegality in convicting and sentencing the accused-appellant.

The learned counsel for the accused-appellant contended that the trial court has committed a serious illegality in convicting the accused-appellant for the

charge under Sections 363, 366 and 376. It is contended that Anita herself wrote a letter (Exhibit D-3) to the appellant, wherein she admitted that she was in love with him and she herself went with him. She was not forced to go with him. It is further contended that she was above 16 years of age. In these circumstances it was a case of consented sexual intercourse, and no offence has been committed by the appellant in the facts and circumstances of the present case.

Alternatively, it is contended that the accused is in jail since 21st June, 2001, therefore, he has already undergone the imprisonment for about 5 years and 11 months, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him.

The learned Public Prosecutor defended the judgment of the trial court and contended that there is overwhelming prosecution evidence in respect of age of the prosecutrix that she is about 14 years of age, therefore, the finding of the trial court is absolutely correct and no interference is called for therein. It is further contended that even if the letter (Exhibit D-3) was written by prosecutrix Anita to the accused-appellant, then the same is irrelevant and immaterial for the reason that she was less than

16 years of age. It is, therefore, contended that there is no merit in this appeal and the same be dismissed.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit P-1, the written-report, was lodged by Jagdish Prasad (PW-1), about abduction of his niece Anita by the accused and FIR No.124/2001 was registered at the Police Station Vazirpur, District Sawai Madhopur under Section 363, Indian Penal Code. On 21st June, 2001. Prosecutrix Anita was recovered from the custody of accused Banni Singh vide Exhibit P-8. Her statement (Exhibit P-10) was recorded under Section 164, Cr.P.C., by Civil Judge (Senior Division)-and-Additional Chief Judicial Magistrate, Gangapurcity, on 25th June, 2001, wherein she stated that during the intervening night of 19th and 20th of June, 2001, she had gone for natural call; the accused abducted her at the point of knife and gave threatening to kill her brother and father. Thereafter, she was taken to Karauli and other places and committed forcible sexual intercourse with her. PW-3 Anita, in her statement, before the trial court, stated that she was kidnapped by accused Banni Singh

and at the point of knife he committed forcible sexual intercourse with her. Her statement is corroborated by the statements of her mother Phoolwati (PW-4) and other prosecution evidence also. The fact of forcible sexual intercourse by accused with the prosecutrix is fully proved in the present case from the prosecution evidence.

The trial court, in Para 7 of the impugned judgment, framed three points for determination. The first point was relating to age of the prosecutrix, which was discussed in Para Nos.8 to 12 of the impugned judgment.

I have examined the finding of the trial court in the light of the submissions of the learned counsel for the appellant as well as the oral and documentary evidence available on the record.

Apart from the prosecution evidence in respect of forcible sexual intercourse by accused with the prosecutrix, there is overwhelming evidence in the case to prove the age of the prosecutrix below 16 years.

PW-2 Hariprasad Meena was examined on behalf of the prosecution, who brought the school record of the prosecutrix and, as per the school-register (Exhibit P-4), the date of birth of Anita is 10th July, 1987, therefore, her age on the date of the incident comes

to 13 years 11 months. Exhibit P-7 is the medical-report in respect of age of the prosecutrix. Exhibit P-9 is the Ossification-Test certificate of prosecutrix Anita. According to the medical-report the age of the prosecutrix was in between 14 to 16 years. Prosecutrix Anita (PW-3) herself has stated her age to be 13 years at the time of the incident. Her mother Phoolwati (PW-4) also stated the age of prosecutrix Anita as 13 years at the time of the incident. From the oral testimony of PW-3, PW-4, medical-evidence (Exhibits P-7 & P-9), statements of PW-5 Dr. Shrimohan Meena, PW-8 Dr. Hansraj Meena, the school-record (Exhibit P-4) and the statement of PW-2 Hariprasad Meena, it is clear that prosecutrix Anita was about 14 years of age at the time of incident, therefore, I find that the finding of the trial court recorded in respect of age of the prosecutrix that she was between 14 to 15 years of age, is based on oral and documentary evidence and I do not see any illegality in the said finding and no interference is called for in this connection.

The trial court has also discussed the prosecution evidence in detail in respect of age of the prosecutrix and recorded a finding that she was in between 15 to 16 years of age. After considering all the facts and circumstances of the case I do not find any illegality in the finding of the trial court.

In view of the above discussion and reasons, it is clear that accused committed forcible sexual intercourse with the prosecutrix Anita and she was less than 16 years of age also. The letter (Exhibit D-3) does not help the accused-appellant in any manner. It is a case of forcible sexual intercourse and in view of the finding in respect of age of the prosecutrix recorded by the trial court, even if there was any consent of the prosecutrix, although the same is not proved in the present case, it becomes irrelevant.

So far as last submission of the learned counsel for the appellant in respect of reduction of sentence of imprisonment of the appellant passed by the trial court is concerned, I do not see any adequate and special reasons for reducing the sentence of imprisonment of the appellant passed by the trial court. Seven years imprisonment is just and reasonable looking to all the facts and circumstances of the present case including the age of the prosecutrix.

In view of the above discussion and reasons, I do not find any merit in any of the contentions of the learned counsel for the appellant. The appeal is devoid of any merit and the same is hereby dismissed.

(Narendra Kumar Jain) J.

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